

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

ROMAN SELEZNEV,

Defendant.

NO. CR11-0070RAJ

ORDER ON DEFENDANT'S  
MOTION TO EXCLUDE  
OTHER ACTS EVIDENCE

The defendant requests that the Court exclude evidence and testimony regarding other retail businesses that the government alleges were hacked into by Mr. Seleznev but not part of the charged conduct. The defendant contends that these alleged intrusions were committed from different places, and over a range of time, and consequently not a part of a single criminal episode. The defendant dually challenges such evidence as inadmissible Rule 404(b) evidence and that it is impermissible to admit it as being inextricably intertwined with the charged conduct.

The government challenges the defendant's motion and asserts that the proposed evidence is not Rule 404(b) evidence. More specifically the government contends that in proving the existence of a scheme to defraud, the government is entitled to present evidence of the entire scheme.

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1 The court analyzes the arguments by first looking at the Second Superseding  
2 Indictment charging language which reads in part:

3 16. It was further part of the scheme and artifice to defraud that,  
4 using the same or similar techniques to those described above,  
5 ROMAN SELEZNEV, and others known and unknown to the Grand  
6 Jury, hacked into, installed malware on, and stole credit card track  
7 data from, *hundreds of retail businesses* (emphasis added) in the Western  
8 District of Washington and elsewhere, but not limited to:...(62 business  
9 locations specifically named in the indictment but not here for brevity of  
10 reference.)

11 Dkt. 90, page 6.

12 A plain and simple reading of the indictment defines the scope of the scheme to  
13 defraud to include intrusions into hundreds of businesses. The allegations of the  
14 indictment and the government's proffer of evidence to be presented at trial clearly allow  
15 the government to present evidence that the other act evidence is part of a single scheme  
16 utilizing common methods and computer infrastructure.

17 Next, the court considers the charging scheme in light of the proposed evidence.  
18 The charging scheme of the government indicates that the defendant's conduct evidences  
19 utilization of the same type of software, the same servers, the same email accounts and  
20 the same websites to allegedly steal and sell credit card data from hundreds of victims far  
21 beyond those charged in the indictment. As noted in *United States v. Williams*, 989 F.2d  
22 1061 (9th Cir. 1993) and reaffirmed in *United States v. Montgomery*, 384 F.3d 1050 (9th  
23 Cir. 2004), "[t]he policies underlying Rule 404(b) are inapplicable when offenses  
24 committed as part of a single criminal episode become other acts simply because the  
25 defendant is indicted for less than all of his actions."

26 The court agrees that under the circumstances presented, the government is correct  
27 in its assertion that the evidence is admissible because it fits within the parameters of  
28 "inextricably intertwined" evidence that has routinely been admitted in this Circuit.  
*United States v. Montgomery*, 384 F.3d 1050, 1061-1062 (9th Cir. 2004; *United States v.*

1 *Mundi*, 892 F.2d 817, 820 (9th Cir. 1989) and *United States v. Williams*, 989 F.2d 1061  
2 (9th Cir. 1993).

3 Consequently, the court finds that the intrusions noted by the government as part  
4 of its case in chief may include the challenged evidence. These intrusions appear to be a  
5 part of a single inextricably intertwined scheme to defraud, and evidence of those  
6 intrusions is not evidence of “other acts” implicating Rule 404(b).

7 For these reasons, the defendant’s motion (Dkt. #365) is **DENIED**.

8 DATED this 4th day of August, 2016.

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11 The Honorable Richard A. Jones  
12 United States District Judge  
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